

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

CORRECTIONS CORPORATION OF AMERICA d/b/a
NORTHEAST OHIO CORRECTIONAL CENTER¹

Employer

and

Case No. 8-RC-16117

FEDERATED UNION OF CORRECTIONAL
OFFICERS (FUCO), LOCAL 1

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction therein.

¹ The Employer's name appears as amended at the hearing.

² The parties have filed briefs which have been carefully considered. The Employer also filed a Motion to Dismiss Petition, which is denied for the reasons set forth in this Decision and Direction of Election.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question of commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.³

All correctional officers employed by the Employer at the Northeast Ohio Correctional Center in Youngstown, Ohio, excluding all other employees, Senior Correctional Officers, Lieutenants, Captains, Assistant Chief of Security, Chief of Security and all other supervisors as defined in the Act.

There are approximately 282 employees in the unit found appropriate. The Employer is a Tennessee corporation engaged in the operation of a correctional/rehabilitation center at a facility in Youngstown, Ohio, the only location involved.

The Employer contends that the Petitioner is not certifiable because of an asserted indirect affiliation with an organization, International Brotherhood of Teamsters, Local 377, AFL-CIO (Local 377) that admits nonguards to membership. In its brief, the Employer further argues that the Petitioner is not certifiable because its Constitution and Bylaws would allow Petitioner to represent nonguards at other institutions.

Section 9(b)(3) of the Act, provides in pertinent part, that:

No labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

³ The unit is in accord with a stipulation reached by the parties.

The record reflects that on November 15, 1999, Local 377 in Case No. 8-RC-15963 was certified to represent the Employer's employees at the location involved herein in the following unit:

All academic instructors, vocational instructors, case management counselor, educational counselor, substance abuse counselor, librarian, and librarian aide, maintenance employees, warehouse/commissary employees, mail room employees, jobs coordinators, count clerks, maintenance clerks and records room clerks, but excluding all office clerical employees, guards and supervisors as defined in the Act.

Thereafter, Local 377 on November 24, 1999, filed a petition in Case No. 8-RC-15983 to represent the Employer's correctional officers, the employees at issue in this proceeding. On December 16, 1999, I issued an Order Granting Employer's Motion to Dismiss as the employees in question were guards within the meaning of Section 9(b)(3) of the Act and Local 377 included in its membership employees other than guards. Thus, Local 377 could not be certified as the collective bargaining representative of those employees.

The record further reflects that on January 13, 2000, at a bargaining session with the Employer regarding the unit in Case No. 8-RC-15963, Local 377 presented a comprehensive package of proposals which included a proposal that the Employer grant voluntary recognition to Local 377 as the representative of its correctional officers upon a demonstration by Local 377 that a majority of those employees had signed authorization cards designating it as their representative. At that time the Employer took the position that it would not address this issue as Local 377 was not permitted to represent guards. Local 377 has not attempted to raise this issue again

Robert E. Bernat, the secretary/treasurer of Local 377, testified that Local 377 made the proposal because in the fall of 1999 a vice president of the Employer had given Local 377 assurances that if Local 377 won the election in the nonguard unit and presented the Employer with authorization cards signed by a majority of the correctional officers, the Employer would voluntarily recognize Local 377 as the collective bargaining representative of its correctional officers. However, Local 377 has not pressed this proposal and has had meetings with the correctional officers informing them that Local 377 is not permitted to represent them under the Act.

The record further reflects that on July 24, 2000, the Petitioner filed with the U.S. Department of Labor Form LM-1 and its Constitution and Bylaws, which were also dated July 24, 2000. The Petitioner also opened a checking account at Sky Bank on September 28, 2000. Subsequently on September 29, 2000, Petitioner filed the petition in the instant case. The record contains no other evidence that the Petitioner has at anytime had a direct or indirect affiliation with Local 377 or any other Union which admits nonguards to membership. No evidence was presented at the hearing which would indicate Petitioner has ever received any assistance from Local 377, or has had any contact with Local 377.

The Board has stated that mutual sympathy, common purpose and assistance between a guard union and a nonguard union is not, without more, indicative of indirect affiliation within the meaning of Section 9(b) of the Act. **Bonded Armored Carrier, Inc.**, 195 NLRB 346 (1972); **International Harvester Company**, 145 NLRB 1747, 1749 (1964). The Board has further stated that although Section 9(b) restricts guards in their choice of a bargaining representative, the proviso requires that, within these

restrictions, the Board is to assure the employees the fullest freedom in exercising their rights. Accordingly, the proviso to Section 9(b), when read in context, requires that the noncertifiability of a guard union must be shown by definitive evidence. **Burns Security Services**, 278 NLRB 565, 568 (1986). In the instant case, the Employer asserts no facts and introduced no evidence that would directly or inferentially support its assertions that Petitioner is directly or indirectly affiliated with Local 377 or any other nonguard union. For the foregoing reasons, I find that the evidence submitted by the Employer is not sufficiently probative to show that the Petitioner is not certifiable because of any direct or indirect affiliation with a union which accepts nonguards as union members.

In its brief, the Employer further asserts that the Constitution and Bylaws of the Petitioner would allow the Petitioner to represent nonguards at other institutions or allow nonguards to be members of the Petitioner. The Employer argues that the controlling Constitution and Bylaws of the Petitioner demonstrate that it could admit to membership employees other than guards. Specifically, the Employer argues that Articles 2 and 4, Section 4.1, show that any employee of any penal facility may be admitted to membership in the Petitioner. These articles provide:

Article 2. Purposes. The purposes of the Union are to engage in collective bargaining with the management of private penal facilities (the Company) regarding wages, hours, and conditions of employment; and to act together for mutual aid and protection.

* * *

Article 4. Membership.

Section 4.1. Membership shall be open to all employees of the Company who do bargaining unit work, after they have completed the probationary period.

The Employer has provided no evidence that the Petitioner has as members any employees who are nonguards. However, the Employer argues that notwithstanding the

fact that Petitioner does not presently represent nonguards, this does not preclude the Petitioner from seeking to represent such employees. Thus, according to the Employer since the Petitioner's Constitution and Bylaws affirmatively would allow nonguards to become members, Petitioner is barred by Section 9(b)(3) of the Act from being certified as the representative of the Employer's guard employees.

The Board has had a longstanding practice of not disqualifying a union from representing guards based on speculation that nonguards are, or could become, members of the union. As the Board stated in **Elite Protective & Security Services**, 300 NLRB 832 (1990):

The theoretical chance that a nonguard employee could join a guard union where, for example, a union constitution might be interpreted as permitting nonguards to become members, is insufficient to deny certification to such a union.

The noncertifiability of a guard union must be shown by definitive evidence. Any less stringent standard would seriously undermine the rights of guards to be represented. **Burns**, *supra* at 565; **Elite**, *supra*; **Lee Adjustment Center**, 325 NLRB 375, 376 (1998); **Children's Hospital of Michigan**, 317 NLRB 580, 583 (1995).. Moreover, in the event that a labor organization certified to represent a unit of guards becomes directly or indirectly affiliated with a union which admits to membership, employees other than guards, or if the certified union admits nonguards to membership in that union, the certification for the labor organization for the guard unit can be revoked. **Lee Adjustment**, *supra*.

For the foregoing reasons, I find that the Petitioner is a guard union that is certifiable under Section 9(b)(3) of the Act.

The parties stipulated at the hearing that the following senior correctional officers are ineligible to vote in any election conducted herein:

Anthony Bingham	Brian Murray
James Berry	Dean Parry
Paula Broussard	Leon Shanter
Veronica Crawford	Keith Traylor
Robert Dudley	David Truman
Melissa Dobranchin	James Tsamparlis
Douglas Fender	Robert Huggins
William Fisher	James Vinion
Willie Gibbs	James Weeden
	Johanna Veal

With no record evidence to the contrary, I accept the parties' stipulation and shall exclude the above listed individuals from the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **FEDERATED UNION OF CORRECTIONAL OFFICERS (FUCO), LOCAL 1.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by November 20, 2000.

Dated at Cleveland, Ohio this 6th day of November 2000.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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